

The number of professions requiring occupational licensing has grown from “5 percent of the employed population in the 1950’s,” to now, “nearly 25 percent of all employed Americans” (National Conference of State Legislatures, 2017). The effects of this boom in occupational licensing are reflected in the mission of the South Dakota Board of Medical and Osteopathic Examiners (SDBMOE). Practically speaking, the growth in occupational licensing reinforces the need for the SDBMOE to be more vigilant in its effort to “protect the health and welfare of the state’s citizens” (SDBMOE, 2017). To uphold the mission of the SDBMOE, potential threats to the state’s citizens need to be addressed. Individuals with criminal records pose a unique challenge to the licensing process. Factors such as crime level, time since the crime occurred, and relevance of the crime to the license all become potentially influential pieces in determining license eligibility. The focus of this review will be the impact of felony convictions on individuals who either possess, or plan to apply for, a license in South Dakota.

Restrictions placed on an occupational license as a result of a felony are not a rare punishment. According to a report from the White House Office of the Press Secretary, “more than 27,000 state occupational licensing restrictions” are in place for people with criminal records (Office of the Press Secretary, 2016). What are the impacts of a felony conviction for those who work in fields not regulated by the South Dakota Board of Medical and Osteopathic Examiners? According to the Council of State Governments Justice Center, South Dakota has 143 administrative rules related to felony convictions and the consequences related to employment and professional licensure and certification (Justice Center, 2017). A felony conviction results in the denial, suspension, and/or revocation of a certification or licensure for professions such as mortgage banker, appraiser, real estate broker, educator, and law

enforcement (these are just a few examples, see Justice Center, 2017 for full list). The Justice Center (2017) lists 101 statutes in South Dakota Codified Law related to felony convictions and the consequences of those convictions for employment and professional licensure. Empirically, it is not uncommon to find license restrictions as a repercussion for criminal convictions and it is not only medical professions that face consequences, related to their license, when convicted of a felony.

The SDBMOE has specific laws and regulations that indicate what qualifies as unprofessional conduct, what grounds exist to deny or revoke a license, and what role a professions code of ethics plays (see Table 1).

Table 1

Statute	Text of Statute
36-4-30 (6)	Conviction of any criminal offense of the grade of felony, any conviction of a criminal offense arising out of the practice of medicine or osteopathy, or one in connection with any criminal offense involving moral turpitude
36-4C-15 (6)	Revocation, suspension or cancellation of license or permit--Grounds. The license or temporary permit of a respiratory care practitioner may be revoked, suspended or cancelled upon any one of the following grounds: (6) The licensee or temporary permit holder is guilty of unprofessional conduct as defined by the rules established by the board or violation of the code of ethics adopted and published by the board
36-10-38	Grounds for refusal of license. The Board of Examiners may, in compliance with chapter 1-26, refuse to grant a license or certificate under this chapter for unprofessional, immoral, or dishonorable conduct on the part of the applicant.
36-10-39.	Grounds for cancellation, revocation or suspension of license or certificate. The Board of Examiners may cancel, revoke, or suspend the license of any physical therapist or the certificate of any physical therapist assistant issued under this chapter upon satisfactory proof of such a licensee's or certificate holder's incompetence, or unprofessional or dishonorable conduct, or proof of a violation of this chapter in any respect.
36-10-40 (4)	Conviction of any criminal offense of the grade of felony, or any conviction of a criminal offense arising out of the practice of physical therapy, or one in connection with any criminal offense involving moral turpitude;
36-10B-13 (3)	Restricting licensure. The board may refuse to renew or grant a license or suspend, revoke, or restrict the license of a person, if under the procedures of chapter 1-26 the board determines the applicant: (3) Is convicted of a felony. The record of conviction or a certified copy of it shall be conclusive evidence of the conviction
36-29-18 (2)	Grounds for revocation, suspension, or cancellation of license. The license of an athletic trainer may be revoked, suspended, or canceled upon any one of these grounds: (2) The licensee has been convicted of a felony during the past five years. The conviction of a felony is the conviction of any offense, which if committed within the State of South Dakota would constitute a felony under its laws;
36-29-19	Initiation of proceedings to cancel, suspend, or revoke license. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the Board of Medical and Osteopathic Examiners has written information that any person may have been guilty of any misconduct pursuant to § 36-29-18 or is guilty of incompetence or unprofessional or dishonorable conduct.
36-31-14 (2)	Grounds for revocation, suspension, or cancellation of license. The license of an occupational therapist or occupational therapy assistant may be revoked, suspended, or canceled upon any one of these grounds: (2) The licensee has been convicted of a felony during the past five years. The conviction of a felony is the conviction of any offense, which if committed within the State of South Dakota would constitute a felony under its laws;
36-31-15	Initiation of license cancellation, revocation, or suspension proceedings. A proceeding for cancellation, revocation, or suspension of a license may be initiated if the board has written information that any person may have been guilty of any misconduct pursuant to § 36-31-14, or is guilty of incompetence or unprofessional or dishonorable conduct.
36-36-6	Grounds for refusal of license. The board may, in compliance with chapter 1-26, refuse to grant a license under this chapter for unprofessional, immoral, or dishonorable conduct on the part of the applicant.
36-36-13	Cancellation, revocation, suspension, or limitation of license for incompetence, unprofessional conduct, or statutory violation. The board may cancel, revoke, suspend, or limit the license of any genetic counselor issued pursuant to this chapter upon satisfactory proof by a preponderance of the evidence, in compliance with chapter 1-26, of such licensee's professional incompetence, or unprofessional or dishonorable conduct as defined in §§ 36-4-29 and 36-4-30, or proof of a violation of this chapter in any respect.

While circumstances may exist in other areas of occupational licensing that allow for circumvention of established rules, the role of unprofessional conduct in the medical field is unique. Rakatansky (2011) argues that in many other professions, the behavior of the professional is not immediately or directly felt by the recipient. However, in the medical field, Rakatansky (2011) argues, "Patients do not interact with the products produced by doctors; the patient-doctor relationship is the product" (p. 712). The onus is on the medical licensing board to ensure that proper safeguards are both in place and executed properly. Both the literature,

and the mission of the SDBMOE are in agreement, that “Ultimately it is the responsibility of the state licensing board to protect the public by adjudicating individual cases, taking into account any possible underlying illness, utilizing appropriate due process, and relying on review by the court as allowed by law” (Rakatansky, 2011, p. 716).

Ethical behavior is also built into the administrative rules that are used to regulate the professions of the SDBMOE. National organizations that represent the professions regulated by the SDBMOE (e.g. American Medical Association) have adopted formal codes of ethics that professionals are expected to abide by. Table 2 shows the professions regulated by the SDBMOE that have adopted a professions’ code of ethics into administrative rule. The actionable product of the code of ethics is found when a violation occurs. The disciplinary process that addresses acts of unprofessional conduct includes violations of the code of ethics—felony conviction being an example of behavior that constitutes a violation.

Table 2

Profession	Administrative Rule Containing Code of Ethics (ARSD)
Physicians and Surgeons	ARSD 20:47:08
Physician Assistant	ARSD 20:52:02
Athletic Trainer	ARSD 20:63:04
Occupational Therapists and Occupational Therapy Assistants	ARSD 20:64:05
Physical Therapists and Physical Therapy Assistants	ARSD 20:66:02
Respiratory Care Practitioners	ARSD 20:70:03
Genetic Counselors	ARSD 20:82:03
Nutrition and Dietetics	ARSD 20:83:03

Felony conviction does not only impact the ability to obtain or maintain an occupational license, it also impacts the ability to bill through Medicare. Federal regulations governing the Centers for Medicare and Medicaid Services (CMS) provide CMS with the authority to revoke the Medicare billing privileges if, “The provider, supplier, or an owner or managing employee of the provider or supplier, was, within the preceding 10 years, convicted (as that term is defined

in 42 C.F.R. 1001.2) of a Federal or State felony offense that CMS determines is detrimental to the best interests of the Medicare program and its beneficiaries” (42 C.F.R. § 424.535, 2006).

A felony conviction for a licensee or applicant of the SDBMOE is a significant hindrance on that individual’s ability to practice their profession. A felony conviction may result in:

- Loss of license
- Restrictions placed on license
- Inability to bill for Medicare
- Issues related to malpractice insurance availability
- Loss of eligibility to apply for licensure

Additionally, to understand the professional implications that a felony conviction has, the following is a snapshot of the limitations of a felony conviction:

- Ineligible for employment in law enforcement
- Ineligible to practice as an attorney
- Ineligible for a pharmacist license
- Ineligible to hold public office
- Ineligible for employment with a school district
- Voting rights restricted
- Ineligible to work as a public accountant

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